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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 PARADISE CONSTRUCTION, LLC,

9 Plaintiff,

10 v.

11 SIGNATURE FLIGHT SUPPORT
12 CORPORATION.,

13 Defendant.

Case No. C16-1810 RSM

ORDER GRANTING DEFENDANT'S
MOTION TO STRIKE SUPPLEMENTAL
EXPERT WITNESS DISCLOSURE

14 THIS MATTER comes before the Court on Defendant's Motion to Strike the
15 Supplemental Expert Disclosure of Charles A. Longley. Dkt. #38. Defendant argues that Mr.
16 Longley was not properly disclosed as an expert witness, and therefore his untimely
17 supplemental report adding numerous new expert opinions is also improper. *Id.* Plaintiff
18 responds that Mr. Longley was properly disclosed as a fact witness, and that it then properly
19 supplemented Mr. Longley's report upon request by Defendant. Dkt. #40.
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21 The deadline for disclosing expert witness reports in this matter was January 19, 2018.
22 Dkt. #34. On that date, Plaintiff served its "expert witness disclosures" on Defendant. With
23 respect to Mr. Longley, Plaintiff provided:
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26 Mr. Longley is anticipated to provide testimony concerning the
27 nonfunctionality of the Aircraft gear warning horn in July 2016. In
28 particular, Mr. Longley is anticipated to testify at trial that following the
29 gear-up landing of the Aircraft on or about July 5, 2016, he personally
30 inspected the Aircraft squat switches, landing gear retraction, and gear
warning horn. Mr. Longley's inspection revealed that the gear warning
horn was inoperative. Furthermore, Mr. Longley was a witness to the

1 July 3, 2015 gear up landing, and is expected to testify regarding the
2 congestion on the air-to-air frequency at Arlington Municipal Airport on
3 July 3, 2015 and the density of ground traffic on the surface at the field
4 and air traffic in the traffic pattern and greater vicinity at the time of the
5 gear-up landing of the Aircraft. Finally, Mr. Longley is anticipated to
6 testify regarding performance of annual inspections, use of checklists in
7 connection therewith, logbook entries pertaining to performance of
8 maintenance, the purpose of a gear warning horn, and his expert
9 knowledge of repair and replacement of aircraft parts, systems, and
10 components, together with related logbook entries and costs.

11 Dkt. #38 at 2. After receiving correspondence from Defendant regarding its perceived
12 deficiencies with the disclosure, Plaintiff acknowledged that Mr. Longley's opinions were
13 not provided as an expert, but rather as a fact witness. Dkt. #39, Ex. 2 at 1-2. Plaintiff also
14 stated that it would provide a supplement as to topics that were outside of the scope of Mr.
15 Longley's initial retention by Plaintiff. *Id.* On March 20, 2018, Plaintiff served a
16 supplemental expert report on Defendant. In that report, Mr. Longley provided numerous
17 opinions outside the scope of the original disclosure. *See* Dkt. #38 at 4. The instant motion
18 followed.

19 Federal Rule of Civil Procedure 26 requires:

20 Unless otherwise stipulated or ordered by the court, this disclosure must
21 be accompanied by a written report – prepared and signed by the
22 witness – if the witness is one retained or specially employed to provide
23 expert testimony in the case or one whose duties as the party's
24 employee regularly involve giving expert testimony. The report must
25 contain:

26 (i) a complete statement of all opinions the witness will express
27 and the basis and reasons for them;

28 (ii) the facts or data considered by the witness in forming them;

29 (iii) any exhibits that will be used to summarize or support
30 them;

(iv) the witness's qualifications, including a list of all
publications authored in the previous 10 years;

1 (v) a list of all other cases in which, during the previous 4
2 years, the witness testified as an expert at trial or by deposition;
3 and

4 (vi) a statement of the compensation to be paid for the study
5 and testimony in the case.

6 (C) *Witnesses Who Do Not Provide a Written Report.* Unless
7 otherwise stipulated or ordered by the court, if the witness is
8 not required to provide a written report, this disclosure must
9 state:

10 (i) the subject matter on which the witness is expected to
11 present evidence under Federal Rule of Evidence 702, 703, or
12 705; and

13 (ii) a summary of the facts and opinions to which the witness is
14 expected to testify.

15 Fed. R. Civ. Proc. 26(2)(B) and (C).

16 Having reviewed Defendant's motion, the Court agrees that Mr. Longley's initial
17 "report" wholly fails to meet the Rule 26 requirements for expert witnesses. It fails to
18 present any "opinions" or the reason or basis for them. It fails to present facts or data used
19 by the witness to form such opinions, and it fails to present the witness's qualifications to
20 serve as an expert. Had Plaintiff intended Mr. Longley to serve as an expert, then it was
21 required to comply with those requirements. At most, the disclosure identified Mr. Longley
22 as a fact witness. Thus, for the reasons stated by Defendant in its motion and Reply brief, the
23 Court agrees that Mr. Longley's supplemental report with new "expert" opinions was
24 improper.¹ Dkts. #38 and #47.

25 Accordingly, having reviewed Defendant's motion, the opposition thereto, and reply in
26 support thereof, along with the parties' supporting Declarations and exhibits, the Court hereby
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1 finds and ORDERS that Defendant's Motion to Strike (Dkt. #38) is GRANTED. **Mr. Longley**
2 **is limited to testifying as a fact witness with respect to the gear-up landing and what he**
3 **saw, including the amount of air and ground traffic at the time, and any work he**
4 **performed on the airplane after the accident and what he discovered through that work**
5 **(i.e., that the gear warning horn was inoperative after the accident).**
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8 DATED this 11th day of May 2018.

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11 RICARDO S. MARTINEZ
12 CHIEF UNITED STATES DISTRICT JUDGE
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¹ The Court is not persuaded by Plaintiff that Defendant waived its right to challenge the supplemental report in any manner. *See* Dkt. #40 at 8.